

1780. December 13. JOHN ANDERSON *against* THOMAS MORTON and OTHERS.

COMMUNITY.

Magistrates charged to pay a sum due by a Bond, granted by them in their corporate capacity, were found entitled to suspension without caution, on granting conveyance of, or security on, the Town's Funds.

[*Faculty Collection, VIII. 176 ; Dictionary, 2514.*]

KAIMES. This is not a corporation instituted with the power of borrowing money : they who borrowed must be liable, but not the office-bearers, who did not borrow.

BRAXFIELD. I wish that the law stood so ; but the truth is, that inferior corporations have power to borrow money. Decree must go against the office-bearers, and they must make over the funds of the corporation.

MONBODDO. Every body politic has a power of borrowing money, unless that power is expressly denied. Personal execution should go against the office-bearers, but time should be allowed to them that they may have an opportunity of stenting the members of the corporation.

[This passed at the first report, 18th November 1779, when a note of precedents was ordered to be given in.]

PRESIDENT. Quoted the case of the *Butchers of Edinburgh*, 1758 and 1761. They who signed the bond, and their heirs, were liable : the other members were not liable. The present deacon and box-masters were liable to the extent of the funds of the corporation, but no farther : *here* the creditor may attach the funds of the corporation.

GARDENSTON. Quoted the law of England, by which, as he said, the *corporation* was liable for a debt contracted in this way.

HAILES. Supposing that the law of England could influence the decision *here*, it would be fit to inquire, whether what with us is called a *corporation* when respecting artisans of any particular trade, is not in England called a *company* : and if so, rules respecting English *corporations* will not be applicable to *companies*.

COVINGTON. This is no corporation for the purpose of borrowing money : the funds may be liable, but not the individual members.

GARDENSTON. Every one who has the *commodum* of a society, ought he not to be subject to the *incommodum* ?

BRAXFIELD. I would adopt the judgment in the case of the *Butchers of Edinburgh*, quoted from the chair.

On the 13th December 1780, "The Lords found that Morton and Alexander, defenders, are not personally liable ; but that decree must go against them to account for the funds of the corporation."

Act. G. Ogilvie. Alt. A. Tytler. Reporter, Gardenston.